



DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change on Information Sharing Between Government Agencies and Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing efforts to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations concerning information sharing between government agencies and financial institutions. Specifically, the regulations require that, upon receiving an information request from FinCEN, a financial institution must search its records to determine whether it maintains or has maintained any account or engaged in any transaction with an individual, entity, or organization named in the request. If a financial institution identifies an account or transaction named in the request, it must report such information to FinCEN in the manner and timeframe specified in the request. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2022-0008 and the specific Office of Management and Budget (OMB) control number 1506-0049.

• Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2022-0008 and OMB control number 1506-0049.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 (PRA) and applicable OMB regulations and guidance. Comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at <https://www.fincen.gov/contact>.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act).¹ The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, 31 U.S.C. 5311–5314 and 5316–5336, and includes notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement

¹ The AML Act was enacted as Division F, 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat 3388 (2021).

AML programs and compliance procedures.² Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.³

The USA PATRIOT Act charged the Department of the Treasury (Treasury) with developing regulations to facilitate information sharing among governmental entities and financial institutions for the purpose of combatting terrorism and money laundering. On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the USA PATRIOT Act.⁴ The rule required financial institutions, upon FinCEN's request ("314(a) request"), to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected, based on credible evidence, of engaging in terrorist activity or money laundering. The rule was expanded on February 10, 2010, to enable certain entities other than Federal law enforcement agencies to benefit from 314(a) requests to industry. As amended, the rule also enables certain foreign law enforcement agencies, state and local law enforcement agencies, and FinCEN itself, on its own behalf and on behalf of appropriate components of Treasury, to initiate 314(a) requests.⁵ Before processing a request, FinCEN requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis. The regulations implementing the rules are found at 31 CFR 1010.520.

² Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism. Section 6101 of the AML Act added language further expanding the scope of the BSA but did not amend these longstanding purposes.

³ Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

⁴ FinCEN, *Final Rule - Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity*, 67 FR 60579, (Sept. 26, 2002).

⁵ FinCEN, *Final Rule - Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity*, 75 FR 6560, (Feb. 10, 2010).

31 CFR 1010.520(b)(3)(i) requires financial institutions,⁶ upon receiving a 314(a) request, to search their records to determine whether they maintain, or have maintained, an account for, or engaged in any transaction with, each individual, entity, or organization named in a 314(a) request. Unless noted otherwise in a request, financial institutions are only required to search their records for the following: (i) current accounts maintained for the named suspect; (ii) any account maintained for a named suspect during the preceding twelve months; and (iii) any transactions⁷ conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which the named suspect was either the transmittor or the recipient, during the preceding six months, which are recorded and maintained electronically.

31 CFR 1010.520(b)(3)(ii) requires financial institutions that identify accounts or transactions for the subject of a 314(a) request to report the match to FinCEN in the manner and timeframe specified by FinCEN. 31 CFR 1010.520(b)(3)(iii) requires financial institutions to designate one person to be the point of contact at the institution to receive 314(a) requests.

II. Paperwork Reduction Act of 1995⁸

Title: Information sharing between government agencies and financial institutions (31 CFR 1010.520).

OMB Control Number: 1506-0049.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for regulations requiring information sharing between government agencies and financial institutions.

⁶ Defined for the purposes of this requirement at 31 CFR 1010.520(a)(1).

⁷ As defined at 31 CFR 1010.505(d).

⁸ The PRA does not apply to the requirement in section 1010.520(b) concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency. *See* 5 CFR 1320.4(a)(2). Therefore, this renewal applies only to the use of the 314(a) requests with respect to queries initiated by non-Federal law enforcement entities.

Affected Public: Businesses or other for-profit and non-profit institutions.

Type of Review: Renewal without change of a currently approved collection.

Frequency: As required.

Estimated Number of Respondents: 14,960.⁹

Estimated Annual Responses per Respondent: 365 searches/responses.¹⁰

Estimated Reporting and Recordkeeping Burden:

In general, FinCEN receives requests from law enforcement, reviews those requests, posts those requests on a secure internet website, and sends notifications to designated contacts within financial institutions across the United States once every two weeks. A 314(a) request contains subject and business names, addresses, and as much identifying data as possible to assist financial institutions in searching their records. Financial institutions must query their records for data matches, including accounts maintained by the named subject during the preceding 12 months and transactions conducted within the last six months. Financial institutions have two weeks from the posting date of the request to respond with any positive matches. Financial institutions are instructed not to reply to the 314(a) request if a search does not uncover any matching of accounts or transactions.

Currently, 100% of 314(a) responses are filed using automated technology. The 314(a) files are posted on FinCEN's secure website. The files are available for download in .csv, .txt, and .doc format to allow for ingestion into various software that financial institutions use to run searches against their systems. All positive responses can be

⁹ On an annual basis, FinCEN sends 314(a) requests to approximately 14,960 financial institutions, consisting of certain commercial banks, savings associations, and credit unions, broker or dealers in securities, future commission merchants, trust companies, life insurance companies, mutual funds and money services businesses.

¹⁰ Based on the number of 314(a) requests issued between May 2021 and April 2022, FinCEN estimates the annual number of requests subject to the PRA to include: 3 from FinCEN, 45 from state/local law enforcement, and 9 from European Union countries approved by treaty, for a total of 57 requests per year, with each request containing an average of 6.4 subjects (including aliases). 57 requests multiplied by 6.4 subjects per request equals 364.8 (rounded up to 365) searches and potential responses annually.

submitted through FinCEN's secure website by checking the box next to each subject for which there is a match and clicking the "submit" button to transmit the responses to FinCEN. Providing downloads in a variety of formats reduces burden on financial institutions by allowing them to automate the search of their records in a format that is compatible with their software and systems.

For the following reasons, FinCEN estimates that it will take approximately 4 minutes to research and report, as necessary, each subject of a 314(a) request:

- Financial institutions have well established processes, and in most cases automated processes, in place to conduct 314(a) searches, given the 20 years that the program has been running.
- Financial institutions are only required to search their records for account and transaction information that is maintained electronically.
- Only positive responses confirming a match are required to be reported to FinCEN by checking a box corresponding to the match on FinCEN's secure website.
- FinCEN has been estimating a burden of 4 minutes per subject in PRA renewals since the expansion of the rule in 2010.¹¹ We have not received public comments questioning or contradicting this estimate.

Estimated Burden Hours Per Respondent: 24 hours annually.¹²

Estimated Total Annual Burden Hours: 363,827.¹³

Estimated Total Annual Cost: \$34,563,565.¹⁴

¹¹ See *supra* note 5.

¹² FinCEN estimates each subject requires 4 minutes to research and report, resulting in approximately 24 hours per year per respondent (365 searches/responses multiplied by 4 minutes per subject and divided by 60 minutes). FinCEN welcomes comments on the accuracy of this assumption.

¹³ The total annual burden computation is as follows: approximately 24 hours per year per respondent multiplied by 14,960 respondents equals 363,827 hours.

¹⁴ The total annual cost computation is as follows: 363,827 hours times the financial institution fully loaded wage estimate of \$95 per hour equals \$34,563,565. To estimate an average hourly financial institution employee wage, FinCEN uses hourly wage data for the following six occupations in each of the nine categories of covered financial institutions that face BSA requirements: chief executives (OCC-code: 11-

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Request for Comments:

a) *Specific request for comments on the PRA hourly burden and cost.*

FinCEN invites comments on any aspect of the PRA burden set out in section II of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its estimate of the burden; (ii) the estimated amount of time per subject; and (iii) the organizational levels of employees engaged in responding to requests.

b) *Specific questions for comment regarding compliance with information requests as outlined in 31 CFR 1010.520 (if the commenter represents a financial institution, FinCEN asks that the comment provide information particular to that financial institution.)*

1. To what extent can a financial institution rely on existing software to conduct its 314(a) search?
2. On average, how long does it take your financial institution to perform a search for a particular subject of a 314(a) request ("314(a) subject")?

1010); financial managers (OCC-code: 11-3031); compliance officers (OCC-code: 13-1041); financial clerks (OCC-code: 43-3099); lawyers and judicial clerks (OCC-code: 23-1010); and computer and information systems managers (OCC-code: 11-3021). The 54 hourly wage estimate inputs (9 financial industry categories multiplied by six occupations) yield a comprehensive financial institution hourly wage estimate of \$67.23. The ratio between benefits and wages for private industry workers is \$11.22 (hourly benefits)/\$26.86 (hourly wages) = 0.42, as of December 2021. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. See U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation Historical Listing," <https://www.bls.gov/web/ecec/ececqrtn.pdf>. The private industry workers series data for December 2021 is available at <https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx>. Multiplying the hourly wage estimate of \$67.23 by the benefits factor of 1.42 and rounding to the nearest dollar produces a fully loaded hourly compensation amounts of \$95 per hour.

3. How often does your financial institution generate a positive match to a 314(a) subject that requires additional research to confirm if the account or transaction is in fact connected to that subject?
4. What steps does your financial institution take once your automated system generates a match to a 314(a) subject to determine if it is an actual match or a false positive? What type of records does your financial institution maintain to document the results of this type of research?
5. How frequently does your financial institution's automated system identify matches to a 314(a) subject that ultimately result in a false positive?
6. What type of records does your financial institution maintain to document that a 314(a) search has been conducted?
7. What is the role of the individual at your financial institution that acts as the point of contact for 314(a) requests?
8. Is more than one employee at your financial institution involved in conducting the biweekly 314(a) searches?
9. Does senior management play a role in reviewing the results of your financial institution's biweekly search for subjects of 314(a) requests?

c) General request for comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated

collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Himamauli Das,
Acting Director,
Financial Crimes Enforcement Network.

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